

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

CORE WIRELESS LICENSING)	
S.A.R.L.,)	
)	Civil Action No. 6:12-CV-100-LED-
)	JDL
Plaintiff,)	
)	JURY TRIAL REQUESTED
v.)	
)	
APPLE INC.,)	
)	
Defendant.)	
)	

APPLE INC.'S NOTICE OF COMPLIANCE

Apple Inc. submits this Notice of Compliance providing preliminary proposed jury instructions on the parties' FRAND-related claims, defenses, and damages, along with corresponding draft jury verdict forms, pursuant to the Court's August 19, 2014 Order. (Dkt. 271.) The parties have met and conferred and understand that, pursuant to Court's August 7 and August 19, 2014 Orders (Dkts. 262, 271) and the Docket Control Order (Dkt. 210 at 4), they will submit all remaining proposed jury instructions including on the patent merits on October 31, 2014.¹

Consistent with the Court's direction at the August 1 hearing, Apple understands that these proposed jury instructions are preliminary in nature. (*See* Aug. 1, 2014 Hearing at 42 ("Again, I'm not locking anybody in. I just want to see where the parties are going on this.").) Apple reserves the right to amend and/or supplement these proposed instructions and to propose additional instructions, including to address Core Wireless's proposed instructions.

¹ Apple understood the parties would also be submitting general instructions (e.g., regarding the process of jury deliberations) on that date, and intends to submit such instructions then.

Further, by submitting proposed instructions for Core Wireless's two contract claims, Apple does not concede that these claims are legally or factually viable. As set forth in Apple's motion to dismiss these claims and its letter briefing requesting the opportunity to move for summary judgment on them, these claims have fundamental legal and factual flaws that should preclude them from being tried. (*See* Dkts.124, 130,213-2, 225-5.)

Given these deficiencies, Core Wireless' contract claims should not be tried.

Accordingly, Apple requests the opportunity for the Court to receive argument to resolve the legal viability of these claims before the jury trial. Apple remains willing for the Honorable John Love to conduct a bench trial and issue a decision on these issues pursuant to 28 U.S.C. §636(c).

Set forth below are the preliminary proposed instructions and draft verdict forms that Apple is submitting herewith:

<i>Instruction</i>	<i>Page</i>
<u>Tab A: Apple's Proposed Patent FRAND Damages Instructions</u>	
LICENSING & FRAND PATENT DAMAGES – INTRODUCTION	2
PATENT DAMAGES -- BURDENS OF PROOF	4
PATENT DAMAGES -- DATE OF COMMENCEMENT OF DAMAGES	5
PATENT DAMAGES -- FRAND REASONABLE ROYALTY	7
PATENT DAMAGES -- SMALLEST SALABLE UNIT	12
PATENT DAMAGES -- LUMP SUM ROYALTY	13
<u>Tab B: Apple's Proposed Breach of Contract Instructions</u>	
BREACH OF CONTRACT -- APPLE'S CLAIM	15
CONTRACT DAMAGES -- APPLE'S CLAIM	17
BREACH OF CONTRACT -- CORE WIRELESS'S CLAIMS	18
CONTRACT DAMAGES -- CORE WIRELESS'S CLAIMS	22
CONTRACT DAMAGES – DUTY TO MITIGATE	24
<u>Tab C: Apple's Proposed Unenforceability Instructions</u>	
APPLE'S WAIVER DEFENSE	27
APPLE'S EQUITABLE ESTOPPEL DEFENSE	29

<i>Instruction</i>	<i>Page</i>
APPLE'S UNCLEAN HANDS DEFENSE	32
APPLE'S AUTHORITY TO PRACTICE DEFENSE	34
Tab D: <u>Apple's Proposed Sample Verdict Form Instructions</u>	
FINDINGS ON FRAND PATENT DAMAGES (IF APPLICABLE)	36
FINDINGS ON APPLE'S BREACH OF CONTRACT CLAIM	36
FINDINGS ON CORE WIRELESS'S BREACH OF CONTRACT CLAIMS	37
FINDINGS ON APPLE'S UNENFORCEABILITY DEFENSES	37

Dated: September 2, 2014

/s/ Joseph J. Mueller

Joseph J. Mueller
(Massachusetts Bar No. 647567)
John J. Regan
(Massachusetts Bar No. 415120)
Cynthia D. Vreeland
(Texas Bar No. 20625150,
Massachusetts Bar No. 635143)
Kate Saxton
(Massachusetts Bar No. 150150)
WILMER CUTLER PICKERING HALE
AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000

Eric Miller Albritton
ALBRITTON LAW FIRM
111 West Tyler Street
Longview, TX 75601
(903) 757-8449
ema@emafirm.com

Attorneys for Defendant Apple Inc.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, the foregoing document was served on all counsel who are deemed to have consented to electronic service pursuant to Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), any counsel of record not deemed to have consented to electronic service are being served with a true and correct copy of the foregoing by email.

Dated: September 2, 2014

/s/ Joseph J. Mueller
Joseph J. Mueller